

REMARKS

In the Final Office Action¹, the Examiner:

1. rejected claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,124,197 to Ocepek et al. ("Ocepek");
2. rejected claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,009,423 to Moran ("Moran");
3. rejected claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 7,174,373 to Lausier ("Lausier");
4. rejected claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, in view of *Lausier*, and further in view of U.S. Patent Application Publication No. 2003/0101353 to Tarquini et al. ("Tarquini"); and
5. rejected claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of U.S. Patent No. 6,580,712 to Jennings et al. ("Jennings").

I. Regarding the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*

Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 1-5, 7, 10-14, 17-22, 24, 27-31, 34-37, 39, 42-46, and 49-52 under 35 U.S.C. § 103(a) because a *prima facie* case of obviousness has not been established with respect to these claims.

¹ The Final Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Final Office Action.

The key to supporting any rejection under 35 U.S.C. § 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *See* M.P.E.P. § 2142, 8th Ed., Rev. 6 (Sept. 2007). Such an analysis should be made explicit and cannot be premised upon mere conclusory statements. *See id.* “A conclusion of obviousness requires that the reference(s) relied upon be enabling in that it put the public in possession of the claimed invention.” M.P.E.P. § 2145. Furthermore, “[t]he mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art” at the time the invention was made. M.P.E.P. § 2143.01(III), internal citation omitted. Moreover, “[i]n determining the differences between the prior art and the claims, the question under 35 U.S.C. § 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious.” M.P.E.P. § 2141.02(I), internal citations omitted (emphasis in original).

“[T]he framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . [include determining the scope and content of the prior art and] . . . [a]scertaining the differences between the claimed invention and the prior art.” M.P.E.P. § 2141(II). “Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

In this application, a *prima facie* case of obviousness has not been established because the Examiner has not clearly articulated a reason why one of ordinary skill would find the claimed combination obvious in view of the cited references.

For example, claim 1 recites a method comprising, *inter alia*:

receiving from the network a packet with an address;

indicating that the received packet corresponds to the wireless access device based on the first three octets of the address and on an operating system associated with the received packet.

(emphasis added). *Ocepek* discloses security device 10 that “passively monitors the data link layer for new client devices 24” (col. 5, lines 14-15). According to Fig. 6 of *Ocepek*, a “correction ARP reply is generated for each protected server 16 and broadcast to all devices” (col. 7, lines 40-41). “The source MAC address is dependent upon the operating system and hardware of protected servers 16” (col. 7, lines 43-44).

Even assuming that the source MAC address of *Ocepek* corresponds to the claimed “address,” which Applicant does not concede, *Ocepek* teaches that the source MAC address “is dependent upon the operating system and hardware of protected servers 16” (emphasis added). Any address that may exist in Fig. 6 of *Ocepek* corresponds to the source MAC address that depends on servers 16. Accordingly, any packet indication that may exist in *Ocepek* indicates that the packet is dependent on servers 16, not client devices 24, which allegedly correspond to the claimed “wireless access device.” Therefore, neither server 16 nor any other component of *Ocepek* corresponds to the claimed “wireless access device,” as asserted by the Examiner.

Ref. 20 in *Ocepek* is a wireless access point that provides client devices 24 access to network 12. The use of wireless access point 20 to provide client devices 24

access to network 10 does not support a contention that server 16 corresponds to the claimed “wireless access device,” at least because one of ordinary skill would recognize that a server is not a “wireless access device.” Therefore, *Ocepek* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device,” as recited in claim 1.

In addition, while *Ocepek* discloses the use of a MAC address, *Ocepek* does not teach or suggest “indicating that the received packet corresponds to the wireless access device based on the first three octets of the address,” as further recited in claim 1.

Accordingly, *Ocepek* does not teach or suggest the elements of claim 1. Moreover, there is no teaching or suggestion that would lead one of ordinary skill in the art to modify the apparatus of *Ocepek* to achieve the combination of claim 1. Thus, as outlined above, the Office Action has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why the claim would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established with respect to claim 1.

Thus, claim 1 is allowable for at least these reasons, and claim 17 is also allowable at least due to its dependence from claim 1.

Independent claims 2, 18, 19, 34, and 49-52, while of different scope, recite elements similar to those of claim 1 and are thus allowable over *Ocepek* for at least the same reasons discussed above in regard to claim 1. Moreover, claims 3-5, 10-14,

20-22, 24, 27-31, 35-37, 39, and 42-46 are also allowable at least due to their dependence from one of claims 2, 19, and 34.

II. Regarding the rejection of claims 6, 23, and 38 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Moran*

Regarding the rejection of claims 6, 23, and 38, which depend from claims 2, 19, and 34, the Examiner relies on *Moran* for allegedly disclosing “comparing based on determination of whether a portion of the address is similar to a portion of at least one of the registered addresses” (Final Office Action at page 12). Even assuming this allegation is correct, which Applicant does not concede, *Moran* fails to cure the deficiencies of *Ocepek* discussed above.

Moran discloses providing “a search structure which can be efficiently searched and which when implemented in the context of a bridge . . . enables the efficient location of data associated with a given 6-byte address” (col. 2, lines 3-6). However, *Moran* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the first three octets of the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 6, 23, and 38.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has

been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the references and a *prima facie* case of obviousness has not been established. Dependent claims 6, 23, and 38 are also allowable over *Ocepek* and *Moran*, for at least the same reasons as their respective base claims 2, 19, and 34.

III. Regarding the rejection of claims 8, 25, and 40 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Lausier*

Regarding the rejection of claims 8, 25, and 40, which depend from claims 2, 19, and 34, the Examiner relies on *Lausier* for allegedly disclosing “determining the operating system at the IP address associated with the address” (Final Office Action at page 13). Even assuming this allegation is true, which Applicant does not concede, *Lausier* does not cure the deficiencies of *Ocepek* noted above.

Lausier discloses a “system of internet broadcasting in which multimedia content is delivered to internet users bypassing most internet backbone” (col. 3, lines 53-55). However, *Lausier* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the first three octets of the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 8, 25, and 40.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has

been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 8, 25, and 40 are also allowable over *Ocepek* and *Lausier*, for at least the same reasons as their respective base claims 2, 19, and 34.

IV. Regarding the rejection of claims 9, 26, and 41 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek*, *Lausier*, and further in view of *Tarquini*

Regarding the rejection of claims 9, 26, and 41, which depend from claims 2, 19, and 34, the Examiner relies on *Tarquini* for allegedly disclosing “determining the operating system using an nmap” (Final Office Action at page 13). Even assuming this allegation is true, which Applicant does not concede, *Tarquini* does not cure the deficiencies of *Ocepek* and *Lausier* noted above.

Tarquini discloses “a method of detecting an intrusion at a node of a network” (paragraph 0014). However, *Tarquini* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the first three octets of the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 9, 26, and 41.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has

been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 9, 26, and 41 are also allowable over *Ocepek*, *Lausier*, and *Tarquini*, for at least the same reasons as their respective base claims 2, 19, and 34.

V. Regarding the rejection of claims 15, 16, 32, 33, 47, and 48 under 35 U.S.C. § 103(a) as being unpatentable over *Ocepek* in view of *Jennings*

Regarding the rejection of claims 15, 16, 32, 33, 47, and 48, which depend from claims 2, 19, and 34, the Examiner relies on *Jennings* for allegedly disclosing “storing the plurality of the organizationally unique identifiers, such that a more frequently encountered organizationally unique identifier is searched before a less frequently encountered organizationally unique identifier” (Final Office Action at page 14). Even assuming this allegation is true, which Applicant does not concede, *Jennings* does not cure the deficiencies of *Ocepek* noted above.

Jennings discloses “the use of a specific or dedicated engine to execute the algorithm” (col. 2, lines 50-51). However, *Jennings* does not teach or suggest the claimed “indicating that the received packet corresponds to the wireless access device based on the first three octets of the address and on an operating system associated with the received packet,” as recited in claim 1 and similarly recited in claims 2, 19, and 34, and required by dependent claims 15, 16, 32, 33, 47, and 48.

As explained above, the elements of claims 2, 19, and 34 are neither taught nor suggested by the cited references, whether taken individually or in combination. Furthermore, as outlined above, the Examiner has neither properly determined the

scope and content of the cited references nor properly ascertained the differences between the cited references and the claimed invention. Therefore, no reason has been clearly articulated as to why claims 2, 19, and 34 would have been obvious to one of ordinary skill in view of the cited references and a *prima facie* case of obviousness has not been established. Dependent claims 15, 16, 32, 33, 47, and 48 are also allowable over *Ocepek* and *Jennings*, for at least the same reasons as their respective base claims 2, 19, and 34.

VI. Conclusion

In view of the foregoing, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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